

September 30, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: *Ex Parte Presentation*
CG Docket No. 04-208

Dear Ms. Dortch:

On Wednesday, September 29, 2004, Christopher Day, Laura Holloway, Leonard Kennedy, Kent Nakamura, Michael Raymond and Caroline Smith of Nextel Communications, Inc. ("Nextel") met with Jay C. Keithley, Deputy Bureau Chief (Policy), Consumer and Government Affairs Bureau ("CGB"); Richard D. Smith, Chief, Policy Division, CGB; Gene Fullano, Legal Advisor to the Bureau Chief, CGB; Leon J. Jackler, Legal Advisor to the Bureau Chief, CGB; Erica H. McMahon, Attorney Advisor, CGB; and Ruth Yodaiken, Attorney Advisor, CGB. During the meeting, the Nextel representatives discussed concerns regarding the March 30, 2004, National Association of State Utility Consumer Advocates' ("NASUCA") Petition for Declaratory Ruling ("NASUCA Petition"), which seeks certain restrictions on the ability of telecommunications providers to price and market their services.

Specifically, Nextel expressed its concerns that NASUCA's Petition would require the Federal Communications Commission ("Commission" or "FCC") to regulate the rates and rate structures of Commercial Mobile Radio Service ("CMRS") providers – a position wholly at odds with the Commission's 1994 decision to deregulate these matters. Nextel also impressed upon the Commission staff the need for FCC intervention in state regulatory activities to preserve the benefits of the deregulatory, federal framework for the provision of CMRS.

At the outset, Nextel noted that it has taken a national approach to the provision of CMRS services, particularly billing and customer service issues. Numerous sales and customer service issues that were previously handled in various field offices are now handled in a centralized environment. This centralized approach has substantially improved Nextel's business economies and efficiencies. More importantly, by centralizing its business policies and systems, Nextel has substantially improved the overall customer experience. This high level of customer satisfaction has been reflected in a number of customer surveys, including Nextel's tie for the top rating in J.D. Powers' 2003 Wireless Customer Care Performance ratings and its low customer "churn" rate.

However, a recent proliferation of state laws and regulations seeking to govern CMRS providers' billing practices threatens to undermine the seamless, national offerings of CMRS providers, such as Nextel. Nextel noted that the California Public Utilities Commission ("CPUC") recently approved a package of customer service and billing rules (the "CPUC Consumer Bill of Rights") that imposes onerous and potentially confusing requirements on CMRS providers – requirements that also, in many instances, directly regulate CMRS rates and rate structures in violation of Section 332 of the Communications Act. For instance, CPUC "Consumer Bill of Rights" Rule 8(b) requires providers to give 25 days advance written notice to term customers for any fee or conditions changes, including the right to a 30-day "opt-out" period after notification where a customer can discontinue service with no early termination fee. Such a requirement not only impermissibly regulates carriers' rates, but it also makes it exponentially more difficult – if not impossible – to implement similar rules and regulations promulgated by other states. In response to questions from Commission staff, Nextel noted that CPUC Rule 8(b) potentially conflicts with a new Minnesota state law governing changes to CMRS provider contract terms. Accordingly, compliance with both state requirements would require Nextel to break up its national customer care and billing process to accommodate conflicting state requirements. In addition, it would also force carriers, such as Nextel, to make difficult decisions regarding which requirement takes precedence in specific cases. For example, if a Nextel subscriber has a handset with a Minnesota number that is primarily used in Minnesota, but billed to a corporate headquarters located in California, and if Minnesota law applies based on the subscriber's phone number and the California rules apply based on billing address, then it is literally impossible for Nextel to comply with both state requirements simultaneously.

Furthermore, Nextel noted that California and Minnesota are not the only states targeting CMRS providers with state-specific billing and customer service requirements. Both the Arizona Corporation Commission and the New Mexico Public Regulation Commission have recently initiated proceedings to study the issue. In addition, legislation is pending in the New Jersey Legislature that would also impose conflicting requirements on CMRS providers.

In order to prevent the Balkanization of billing and customer service requirements, which is wholly at odds with the uniform national approach wireless carriers have adopted over the last decade, Nextel urged Commission action to ensure that regulation of CMRS practices remains on the federal level. By bringing its Petition to the FCC, NASUCA recognized that the Commission is the proper authority to regulate in this area. The relief sought by NASUCA, however, would only further confuse consumers by essentially delegating authority over billing charges to state and local authorities – and complicate efforts to maintain national, standardized practices. Therefore, Nextel suggested that the Commission consider the adoption of its own federal guidelines on CMRS billing and customer service practices. For instance, most wireless

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carriers have implemented the CTIA Consumer Code for Wireless Service, and the Commission has already endorsed it as an appropriate federal model for CMRS providers in the context of wireless carriers receiving designation as Eligible Telecommunications Carriers ("ETC") for the receipt of Universal Service Funds.¹ Thus, it is a proven model for new federal guidelines regarding CMRS billing and consumer practices.

As requested by Commission staff during the course of the meeting, attached is additional information regarding the litigation of the CPUC rules and the Minnesota law discussed during the meeting. In addition, Nextel representatives left with Commission staff a copy of an article that recently appeared in the *Federal Communications Law Journal*.² A copy of that article is also attached to this letter.

Pursuant to Section 1.1206(b)(2) of the Commission rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding. Should you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Christopher R. Day
Christopher R. Day
Counsel, Government Affairs

Attachments

cc: Jay C. Keithley
Richard D. Smith
Gene Fullano
Leon J. Jackler
Erica H. McMahon
Ruth Yodaiken

¹ See, e.g., *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, 19 FCC Rcd 1563 (2004).

² See Leonard J. Kennedy and Heather A. Purcell, *Wandering Along the Road to Competition and Convergence – The Changing CMRS Roadmap*, 56 FED. COMM. L.J. 489 (2004).